1943 K File No. Fees charity 43

Legal Dept

C BRANCH

SM 30/7

**Subject:—** Fees in charity suits

D.8

**File No.** Fees charity 1.3

Gen. 194 a.

399-C

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PSM. 14/4.

5064/[illegible]

Submitted. with pp.

2. The A.G., Bombay wants to know whether the sanction to sanction the expenditure of Rs. 275-13-0 above the cost allowed by the Court has been delegated by the Finance Department to the D.L.A. under rule 11(2) of the Rules of Business. If the same is delegated it may be pointed out to him. He further requests that if the same is not delegated the sanction of Govt. may be obtained and communicated to him through F.D.

3. Attention in this connection is invited to this Deptt. G.O. No.3550, dated the 22nd April 1941 by which the suit was instituted. The F.D. was not consulted when the G.O. was issued. By this G.O. the Advocate General was indemnified by Govt. for costs, charges and expenses which he may have to incur as plff. and also for costs (if any) which he may be ordered to pay to the defendant. The attention of the Accountant General was invited to this Resolution. In view of the present letter of A.G. it is for orders whether the sanction of F.D. to repay.

Sd/-

Supdt.

Sd/-

P.A..

I think this will have to be dealt with by the office again, if necessary after informal consultation with F.D.

2. I recollect having seen an F.D. or by D order authorising payment of Rs.250/- as costs of the A.G. Pl/. verify.

3. Under the rules now put up, can R.L.A. sanction the payment without reference to F.D.

Sd/-
23/6.

Submitted with reference to P.A's note dated the 23rd June 1942.

2. The G.R. referred to by the A.A. is G.R. L.D. No. 8982, dated 15.10.1941 in the preamble of which the High Court decree has been printed. The decree states "This Court lastly order that the Defendants (viz. the Province of Bombay) do pay the sum of rupees two hundred and fifty to the plaintiff for his costs of the suit."

3. The Accountant General insists therefore, that the Advocate General is entitled to receive Rs. 250/- only in accordance with the above G.R. and not to Rs.Rs.525-13-0 as already drawn on his behalf. He is therefore enquiring if the power to sanction expenditure in question viz. Rs. 275-13-0 above the amount allowed by the High Court has been delegated to the R.L.A. by the P.A. under rule 11(4) of the Rules of Business.

4. We had stated in our letter No.3 [illegible], dated 13-5-1942 that by virtue of G.R. L.D. No.3550, dated 22-4-1941 the Advocate General is entitled to claim from the Govt. attorney's fee client costs. This the

This the A.G. does not admit in view of the later G.O. referred to in para. 2 above.

5. In this connection attention is invited to L.D. Solicitor's note dated 9-1-47 wherein he has stated [illegible] Co. are right as related [illegible] para. 3, para. 6. The Solicitor has therefore suggested that this particular bill may be held out for the present when such [illegible] by Govt. or by the Advocate General on behalf of Govt. Govt may consider the question of [illegible] and make it clear that it [illegible] on behalf of Govt. [illegible] the Advocate General in such cases.

A 6. In view of facts mentioned above, the expenditure of Rs.2^-12-0, where the costs allowed by the Court, may be charged under the head P.D. to the P.D.

7. The A.F. may also be informed that sanction of the Solicitor in [illegible] to compromise of para. 5 is also necessary for which [illegible] to avoid [illegible] of delay.

[illegible]
7/7/47.

Secy.
L.D.
7/7/47.

[illegible] A.G. at A.

[illegible]
13/7 L.[illegible].
13/7.

Solicitor
[illegible] 13/7.

[illegible]
[illegible] C.M.
14/7.

[illegible] No. 774 dt. 15-7-47.

## Finance Department.

Technically as Messrs. Little & Co, are right to prefer their bill for Rs.225-13-0 in Civil Suit No.800 of 1941 (vide para 8 of Govt. Solicitor's note dated 9-12-41. Please also see Govt. Solicitor's note dated [illegible] and P.A.'s note dated 14-1-42). This Deptt. may agree to the proposal of the L.D. to sanction the expenditure of Rs. 275-13-0, above the costs allowed by the High Court in the suit referred to above.

Id/-
17-7-42.

L.D. may be requested to say (1) whether in proceedings to which Govt. (Province of Bombay) is a party, the Govt. Solicitors can act as Solicitors for the opposite party. In the present case the suit was by the Advocate General against the Government of Bombay and it appears that the Solicitors to Govt. acted as Solicitors for the Plaintiff without taking the previous sanction of the Govt. L.D. may kindly state whether this is correct and if so, whether it is proper, in view of Rules 8 and 9 of Law Officers (Conditions of Service) Rules, As Govt. was ordered to bear costs and as Govt. was the only defendants, would it be correct to say that Govt. was only a formal party.

Id/-

u.s.r. to L.D., dated 20-7-42 (x) with file.

Rule

Submitted with reference to Dy.Secy. L.D.'s query above.

Id/- D.R.P.
23/7/42.

Submitted.

The suit was filed by the Advocate General at the instance of Govt. and therefore was really on behalf of Govt. The A.G. was only a nominal plaintiff. The suit was [illegible].

J...
27/7.

P.A.
Id/- S...
28/7.

A.S.
Id/- R.T...
28/7.
Submitted with the proposal of Govt.
Id.-
28/7.
A.L...
Id/- P.S...
1/8.

u.r. to F.D. No. 6903 dated 3-8-42. SMT/27.

Finance Department.

Submitted with reference to Deputy Secretary's note dated 18-7-42.

2. The L.D. states that the suit in question was filed by the Adv. General with the consent of Govt., and therefore was really on behalf of Govt. The Advocate General was only a nominal plaintiff. In the above circumstances presumably the Adv. General is not considered to be an opposite party and as such the Govt. Solrs. may not require permission of the Govt. under rule 5 of the Law Officers (Conditions of Service) Rules If this view is approved, the proposal of the L.D. to sanction the expenditure of Rs.275-13-0. above the costs allowed by the High Court may be agreed to by this Deptt.

Id/-

4/8/42.

Proposal of L.D. to sanction the exp. of Rs. 275-13-0 may be agreed to.

F.D. notes that L.D. will in future ask the Solicitor in L.D. to get for the Adv. General in such suits in future.

-/-
4/8/

u.o.r. to L.D. dated 4.8.42.

(x with L.D.).

G:T/27.7.

Suits.
Bombay.
For obtaining the sanction of the High Court, Bombay to the sale of the Elphinstone College Hostel to His Grace the Archbishop of Bombay and for utilising the sale proceeds towards the construction of a building for students' quarters and for erecting a portion of the building after the late Justice Telang.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.6834.
Bombay Castle, 1st August 1942.

Read Government resolution, Legal Department No. 8982, dated the 15th December 1941.

Letter from the Remembrancer of Legal Affairs No. 3996, dated the 15th May 1942 to the Accountant General, Bombay :-

"With reference to paragraph 1 of your letter No. D.A.III. 27. Pressy. 170, dated the 17th April 1942, on the above subject, I have the honour to state that costs of Rs. 250/- awarded to the plaintiffs by the decree are party and party costs. By virtue of Government Resolution, Legal Department No. 2550, dated the 22nd April 1941, the Advocate General is entitled to claim from the Government attorney and client costs. Messrs. Little & Co. have prepared their bill according to the scale of attorney and client costs. There is a difference between party and party costs and attorney and client costs. It is not, therefore, correct that the sum of Rs. 275-13-0 has been overdrawn by Messrs. Little & Co. The question of their refund by any amount does not therefore arise."
2. X X X X X X

Letter from the Accountant General, Bombay No. D.A. III/27/Pressy./709, dated the 4th June 1942:-

"With reference to your letter No. 3996, dated the 13th May 1942, on the subject noted above, I have the honour to request you to state with reference to Rule 11(4) of the Rules of Business, whether the power to sanction the expenditure in question viz., Rs. 275-13-0, above the cost allowed by the High Court has been delegated by the Finance Department to you. If so the rule may please be pointed out. If not, I would request, that sanction of Government may please be obtained and communicated to this office, through the Finance Department.

An early reply is requested.

RESOLUTION.— Government is pleased to sanction the expenditure of Rs. 275-13-0 being the amount above the cost

allowed by the High Court inthe case referred to above.

By order of the Governor of Bombay,

Sd/- N.T.Katdare.

for { P. N. MODS,
Secretary to Government.

To

The General Department

The Finance Department

The Accountant General (through the Finance Department)

The Director of Public Instruction, Poona

The Advocate General, Bombay

The Solicitors to Government.

Orders issued in consultation with the Finance Department. Notes remain inthis Department and can be seen when required.

Sd/-

GNT/27.7.

SVA. 28/7

28/7